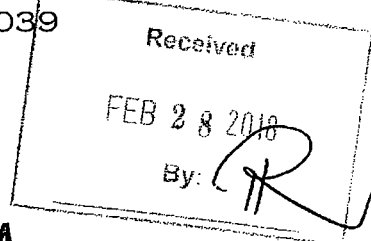


ARIZONA STATE VETERINARY MEDICAL EXAMINING BOARD

1740 W. ADAMS ST., SUITE 4600, PHOENIX, ARIZONA 85007

PHONE (602) 364-1PET (1738) FAX (602) 364-1039

VETBOARD.AZ.GOV



COMPLAINT INVESTIGATION FORM

If there is an issue with more than one veterinarian please file a separate Complaint Investigation Form for each veterinarian

PLEASE PRINT OR TYPE

FOR OFFICE USE ONLY

Date Received: Feb. 28, 2018

Case Number: 18-03

A. THIS COMPLAINT IS FILED AGAINST THE FOLLOWING:

Name of Veterinarian/CVT: Virginia Kern

Premise Name: East Mesa Animal Hospital

Premise Address: 430 S. Gilbert Rd.

City: Mesa State: AZ Zip Code: 85204

Telephone: (480) 833-8562

B. INFORMATION REGARDING THE INDIVIDUAL FILING COMPLAINT*:

Name: Jessica Baker-Beranek

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Home Telephone: [REDACTED] Cell Telephone: [REDACTED]

*STATE LAW REQUIRES WE HAVE TO DISCLOSE YOUR NAME UNLESS WE CAN SHOW THAT DISCLOSURE WILL RESULT IN SUBSTANTIAL HARM TO YOU, SOMEONE ELSE OR THE PUBLIC PER A.R.S. § 41-1010. IF YOU HAVE REASON TO BELIEVE THAT SUBSTANTIAL HARM WILL RESULT IN DISCLOSURE OF YOUR NAME PLEASE PROVIDE COPIES OF RESTRAINING ORDERS OR OTHER DOCUMENTATION.

C. PATIENT INFORMATION (1):

Name: Nick "baby boy"

Breed/Species: Boston Terrier

Age: 9 weeks (12/21/17) Sex: M Color: Black, Brindle, White

PATIENT INFORMATION (2):

Name: _____

Breed/Species: _____

Age: _____ Sex: _____ Color: _____

D. VETERINARIANS WHO HAVE PROVIDED CARE TO THIS PET FOR THIS ISSUE:

Please provide the name, address and phone number for each veterinarian.

Virgina Kern
East Mesa Animal Hospital
430 S. Gilbert Rd.
Mesa, AZ 85204
(480) 833-8562

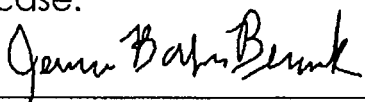
E. WITNESS INFORMATION:

Please provide the name, address and phone number of each witness that has direct knowledge regarding this case.

Vet Technician and office staff, names unknown at East Mesa Animal Hospital

Attestation of Person Requesting Investigation

By signing this form, I declare that the information contained herein is true and accurate to the best of my knowledge. Further, I authorize the release of any and all medical records or information necessary to complete the investigation of this case.

Signature: 

Date: 2/27/18

F. ALLEGATIONS and/or CONCERNS:

Please provide all information that you feel is relevant to the complaint. This portion must be either typewritten or clearly printed in ink.

On 2/23/18 I brought my 9 week old puppy born 12/21/17 into the East Mesa Animal Clinic for a new puppy exam. I brought with me his vaccination records from the Breeder, Jane Doro. My personal records showed he had vaccinations at 6 and 8 weeks. The labels from the vaccination records administered from the breeder read as follows:

6 weeks: Parvovirus Vaccine - CPV MLV

6 weeks: Canine Distemper-Adenovirus Type 2-Parainfluenza Vaccine - CDV-CAV2-CPI-MLV

8 weeks: Canin Distemper-Adenovirus Type 2-Parainfluenza-Parvovirus Vaccine

At the time of his appointment on 2/23/18, the above mentioned copy was provided to the front office staff for their records, as well as presented to Dr. Kern at the time of examination. Dr. Kern examined the puppy and found him to be healthy. She then recommended 2 vaccinations and a dose of Heartguard. She administered the 2 vaccinations and provided me with the Heartguard to take home. I asked if there would be any side effects from the vaccines, she said no.

I paid my bill and received my print out statement, which listed 4 items:

Heartguard Single

Routine Exam

CPV - New Parvo

DH - New DH

After returning home, I decided to look up more information about puppy vaccination schedules and I read that boosters should be 2-3 weeks out so that the puppy's body will have time to develop antibodies to the vaccines. This alarmed me, because according to the breeder records he received vaccines at 6 and 8 weeks, and the puppy was again vaccinated by Dr. Kern at 9 weeks old.

On 12/27/18, I contacted the office staff to request a detailed copy of his puppy exam and vaccination record. I was transferred to the "vaccine specialist" and she said they showed no history of prior vaccines. I told her I gave them the breeder vaccination info and she then told me they must have disregarded it because the breeder is not a licensed veterinarian. So then I asked for details on what vaccines were given, since my statement only showed "CPV Parvo" and "DH". She told me that they showed "DM" on file, which stands for distemper, measles. She said they "must have hit the wrong button" because my puppy did not receive the "DH" vaccination. I requested that she mail to me this detailed information for my records and she agreed. She reported that they do not have access to email, because "their system is so old it still uses DOS."

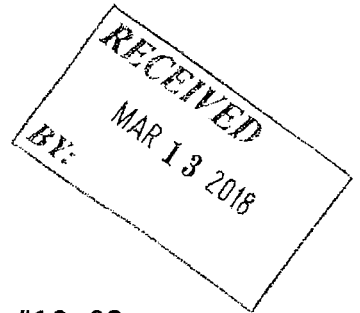
My puppy, at the date of this writing on 2/27/18, appears to be unharmed, however I am concerned about the inaccurate documentation at the vet office as well as the lack of explanation that they don't regard the breeder's vaccinations to be a part of his medical records. There was no explanation about potential side effects of over vaccinating my puppy. It's very scary to be told that someone may have "hit the wrong button" when

puppy. It's very scary to be told that someone may have "hit the wrong button" when documenting on your pet's medical records. I requested a full copy of what vaccinations were administered to him and she agreed to mail it out to me.

My concerns are she is not properly documenting what occurred at the vet visit and the fact that I presented the vet with his breeder's vaccination records. I assumed the vaccinations to be true from the breeder and would expect to vaccinate him according to the schedule already started in order to avoid any health issues or unnecessary vaccinations. He had already had 2 sets of vaccinations, and additionally now I will potentially have to pay for even more series since her vaccinations may have negated the vaccinations that were previously administered. I also explained that the vet had the puppy on Eukanuba dry dog food and I intended to keep him on it until he is settled and then transition him to the Nutro brand that my other dog eats. She insisted that I add ½ - 1 full can of wet food to his diet daily (to make sure he is eating, even though there was no claim that the puppy was not doing so). She denied that this would result in any GI issues. Which in fact, it did give him diarrhea. I have since removed the wet food and the diarrhea resolved. I have included a copy of the vaccination record from the puppy's breeder, which I provided to the vet and the office staff, as well as the statement that I was given from the animal hospital.

Thank you.

East Mesa Animal Hospital, PC
430 South Gilbert Road
Mesa, Arizona 85204
office 480-833-8562 fax 480-833-6037
email: office@emahpc.com
www.emahpc.com



03/12/18

CASE #18-83

BOARD MEMBERS:

I EXAMINED THIS BOSTON TERRIER PUPPY ON 02/23/18. THIS PUPPY WAS VERY HEALTHY. THE OWNER SAID THAT THE BREEDER HAD GIVEN THE FIRST 2 VACCINES, 1 AT 6 WKS (DA2/CPV) & 1 AT 8WKS (CPV). THE PUPPY WAS BORN ON 12/21/2017. AT THE TIME I SAW THE PUPPY IT WAS 9WKS OLD. I GAVE HIM CPV, (PARVO VAX), AND A DM (DISTEMPER/MEASLE VAX), SENT HOME A HEARTGARD BLUE TO BE GIVEN ON A FULL STOMACH. THE OWNER WAS CONCERNED BECAUSE IT HAD ONLY BEEN 1 WEEK SINCE THE LAST CPV VAX WAS GIVEN, THE REST OF THE CONVERSATION I DO NOT RECALL. THE OWNER CALLED BACK A FEW DAYS LATER SAYING THE PUPPY WAS DOING FINE.

WE CAN BE FAULTED BECAUSE THE PUPPIES RECORD WAS NOT COPIED FROM THE BREEDER THEN FILE IN THE PUPPIES CHART. TO PREVENT THIS FROM HAPPENING AGAIN, I WILL PERSONALLY RECORD THE BIRTHDATE OF THE ANIMAL ALONG WITH ANY DATES OF VACCINES THAT WERE GIVEN SO THEY DO BECOME A PERMANENT PART OF THE RECORD.

IN REPLY TO THE OWNERS COMPLAINT THE VACCINATION I GAVE NEGATED THE BREEDERS IS NOT TRUE, THE MATERNAL ANTIBODY YES, BECAUSE OF THIS ADDITIONAL VACS^{es} REQUIRED.

MY VACCINE PROTOCOL IS AS FOLLOWS:

6wks - DM/CPV
8wks - CPV
10wks - DH2/CPV
13wks - DH2/CPV
16wks - DH2/CPV

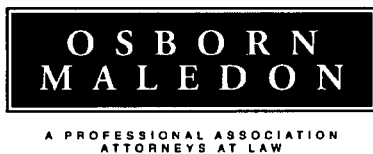
RABIES

FECALS ARE RECOMMENDED AT 8-10 & 13wks OF AGE.

SINCERELY YOURS,


VIRGINIA A KERN D.V.M.

Virginia A Kern, DVM



Josh Bendor

jbendor@omlaw.com

2929 North Central Avenue
21st Floor
Phoenix, Arizona 85012

Direct Line 602.640.9350

Telephone 602.640.9000

Facsimile 602.640.9050
omlaw.com

August 7, 2018

VIA EMAIL ONLY - tracy.riendeau@vetboard.az.gov

Arizona State Veterinary Medical Examining Board
c/o Tracy Riendeau
1740 W. Adams Street, Suite 4600
Phoenix, AZ 85007

Re: Case Number: 18-83
Complainant: Jessica Baker-Beranek
Respondent: Virginia Kern, DVM

Dear Arizona State Veterinary Medical Examining Board:

We represent Dr. Virginia Kern with respect to the above-referenced charge. Dr. Kern has reflected on the Investigative Committee's letter outlining its proposed findings, and wishes to share these thoughts in advance of the Board's August 15, 2018 meeting.

Dr. Kern recalls the puppy in question quite clearly. He was a lively Boston Terrier. She examined him thoroughly and found him to be in great shape. Dr. Kern acknowledges that she made a mistake in forgetting in this instance to fill out the examination statement; all she can say is that she generally does record her findings during each examination and apologizes for her lapse in this case.

Dr. Kern also recognizes that she should have recorded the route by which she administered the vaccine. The reason she did not record the route is that, as a matter of practice, she always administered that type of vaccine in the hind leg, consistent with the product's directions. But she recognizes that this is no excuse, and she has since revised her practice to ensure that she documents the route of administration of each vaccine she administers.

Dr. Kern is, frankly, mortified by the fact that she accidentally administered an expired vaccine. As soon as she learned of that fact, she directed her staff to comb through the vaccine refrigerator and ensure that no expired supplies remained (they found none). In addition, she recently directed her staff to conduct an audit of the vaccinations administered in the three weeks preceding her treatment of the puppy at issue; that audit found that no other expired vaccines had been administered.

Finally, Dr. Kern recognizes that the distemper measles vaccine is no longer recommended, and she has modified her practice accordingly. Dr. Kern is admittedly puzzled that she had not learned of this change, as she takes her continuing education seriously and does her best to keep up with the literature. It is possible that she was not aware of the change because it occurred during the period (between 2003 and 2010) when she suffered serious health problems and underwent chemotherapy. Dr. Kern believed she had caught up with the advances

in professional knowledge that took place during that time, but she will redouble her efforts to keep abreast of the professional guidelines.¹

In conclusion, although there is no indication that the puppy was harmed in any way, Dr. Kern recognizes and apologizes for her errors. She has learned from her mistakes, and she will continue to do her best to give her patients the care and dedication they deserve.

Sincerely,

A handwritten signature in black ink, appearing to read 'Josh Bendor', with a stylized, cursive-like script.

Josh Bendor

JB:kw

¹ However, it is not clear that the regulations allow the Board to discipline a veterinarian for not following guidelines which “are not intended to represent a universal vaccination protocol.” AAHA, 2017 Canine Vaccination Guidelines at 27.



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INVESTIGATIVE COMMITTEE REPORT

TO: Arizona Veterinary Medical Examining Board

FROM: PM Investigative Committee: Donald Noah, D.V.M. - Chair
Amrit Rai, D.V.M.
Adam Almaraz
Christine Butkiewicz, D.V.M.
William Hamilton

STAFF PRESENT: Tracy A. Riendeau, CVT – Investigations
Sunita Krishna, Assistant Attorney General

RE: Case: 18-83

Complainant(s): Jessica Baker-Beranek

Respondent(s): Virginia Kern, DVM (License: 0781)

SUMMARY:

Complaint Received at Board Office: 2/28/18

Committee Discussion: 7/10/18

Board IIR: 8/15/18

APPLICABLE STATUTES AND RULES:

Laws as Amended July 2014

(Salmon); Rules as Revised September
2013 (Yellow)

On February 23, 2018, "Nick," a 9-week-old male Boston Terrier was presented to Respondent for an exam. Complainant brought a copy of the dog's vaccination record from the breeder showing he had been vaccinated at 6 and 8 weeks of age.

Respondent administered the dog a parvo vaccine and a distemper/measles vaccine. Complainant expressed concerns that it had only been one week since the dog was vaccinated; Respondent disregarded the dog's vaccination history and vaccinated the dog with an expired vaccine.

Complainant contends Respondent was negligent in the care of the dog.

Complainant was noticed and did not appear.

Respondent was noticed and appeared with counsel, Josh Bender.

The Committee reviewed medical records, testimony, and other documentation as described below:

- Complainant(s) narrative: Jessica Baker-Beranek
- Respondent(s) narrative/medical record: Virginia Kern, DVM

PROPOSED 'FINDINGS of FACT':

1. On February 23, 2018, the dog was presented to Respondent for an exam. Complainant reported that the dog was born December 21, 2017 and presented the premise with a copy of the dog's vaccination history supplied by the breeder. The record indicated the dog received the following:

- 6 Weeks: Parvovirus Vaccine – CPV MLV; and
Canine Distemper-Adenovirus Type 2- Parainfluenza Vaccine CDV-CA2-CPI-MLV
- 8 Weeks: Canine Distemper-Adenovirus Type 2- Parainfluenza Vaccine

2. Respondent stated that the dog was very healthy and administered a CPV and DM. She also sent the dog home with Heartgard Blue. Complainant had expressed concerns that it had only been one week since the puppy was vaccinated – Respondent stated that she does not recall the conversation that took place.

3. The record shows the dog had a weight = 5.4 pounds, a temperature = 99.2 degrees, a heart rate = 140bpm and a respiration rate = 40rpm. There are no physical exam findings marked – the exam sticker is not completed. Furthermore the expiration date of the Canine Distemper-Measles vaccine is February 28, 2017 – the dog was presented to Respondent on February 23, 2018. Respondent administered the expired vaccine to the puppy; no route of administration was documented.

4. Complainant expressed concerns that Respondent's vaccines may have negated the vaccinations that were previously administered by the breeder. Additionally Respondent insisted Complainant add ½ - 1 can of wet food to the dog's diet to ensure he was eating. Complainant did not report the dog was not eating well and was concerned that this may cause gastrointestinal issues. The canned food did result in giving the dog diarrhea, therefore Complainant discontinued.

5. Respondent stated that the vaccines she administered would not negate the previously administered vaccinations. Additionally, she stated she would copy vaccination records from breeders provided by pet owners to include as part as the pet's medical record from this point forward.

COMMITTEE DISCUSSION:

The Committee discussed that they appreciate the efforts that have been made to correct the problems that occurred in this case however it does not change the fact that there was not a physical exam recorded and an expired vaccine was administered to the puppy. There were other medical record keeping omissions.

The Committee expressed concern that Respondent could not assure them that the other patients that may have received the expired vaccine were recalled. Respondent is the responsible veterinarian and should have checked with staff to ensure that issue was addressed.

The Committee further expressed concern that the puppy was vaccinated a week and a half after it had been vaccinated by the breeder however, they did not feel it rose to the level of a violation. The Committee did feel that using a vaccine containing measles fell below the standard of care.

COMMITTEE'S PROPOSED CONCLUSIONS of LAW:

The Committee concluded that possible violations of the Veterinary Practice Act occurred.

COMMITTEE'S RECOMMENDED DISPOSITION:

Motion: It was moved and seconded the Board find:

ARS § 32-2232 (21) as it relates to AAC R3-11-502:

(L) (4) for not documenting in the medical record the results of exam, including general condition of the animal; and

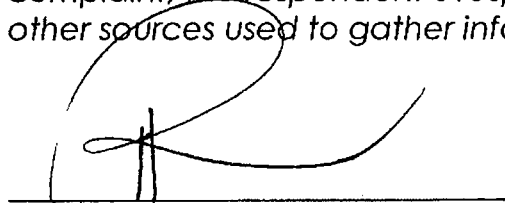
(L) (7) (d) for not documenting in the medical record the route of administration of the vaccine administered to the dog.

ARS § 32-2232 (18) as it relates to AAC R3-11-501 (D) for failure to ensure no expired supplies are used.

ARS § 32-2232 (12) as it relates to AAC R3-11-501 (1) for failure to use current professional and scientific knowledge by administering a distemper measles vaccine to the puppy as it is not the current recommended protocol.

Vote: The motion was approved with a vote of 5 to 0.

The information contained in this report was obtained from the case file, which includes the complaint, the respondent's response, any consulting veterinarian or witness input, and any other sources used to gather information for the investigation.



Tracy A. Riendeau, CVT
Investigative Division